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Letter dated 16 October 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 18 July 2003 (S/2003/741).

The Counter-Terrorism Committee has received the attached third report from Luxembourg submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

[Original: French]

Letter dated 8 October 2003 from the Permanent Representative of Luxembourg to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

Further to your letter of 27 June 2003, I have the honour to transmit to you hereby the second supplementary report of Luxembourg (and its two attachments) to the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism (see enclosure).

(*Signed*) Jean-Marc **Hoscheit**
Ambassador

Enclosure

Second supplementary report of Luxembourg to the Security Council Counter-Terrorism Committee

This report contains the replies to the questions concerning implementation measures transmitted by the Chairman of the Counter-Terrorism Committee in his letter of 27 June 2003.

1. Implementation measures

Paragraph 1.2

Status of the draft law of 29 April 2002 on the suppression of terrorism and its financing: outline of the law's provisions

The draft law of 29 April 2002 on the suppression of terrorism and its financing and on the approval of the International Convention for the Suppression of the Financing of Terrorism which was opened for signature in New York on 10 January 2000 has since been adopted and constitutes the Act of 12 August 2003, which entered into force on 19 September 2003 (National Gazette A No. 137 of 15 September 2003, p. 2849 ss).

This Act made the following types of conduct criminal offences:

- Terrorist acts (new arts. 135-1 and 135-2 of the Penal Code);
- Terrorist association (new arts. 135-3 and 135-4 of the Penal Code);
- Financing of terrorism (new arts. 135-5 and 135-6 of the Penal Code).

The same Act established the newly created terrorist offences as basic offences under money-laundering through the amendment of article 506-1 of the Penal Code.

It should be emphasized that this broadening of the offence of money-laundering fulfilled the wishes expressed by the Security Council in paragraph 4 of resolution 1373 (2001) of 28 September 2001. For, after noting with concern the close connection between international terrorism and money-laundering, the Council invited States "to enhance coordination of efforts on national, subregional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security".

The other major changes brought about by the Act of 12 August 2003 may be outlined as follows:

- The principle of "*aut dedere aut judicare*" has been extended to terrorist offences (new art. 7-4 of the Code of Criminal Procedure);
- The obligation to notify a person that he or she is, or has been, under telephone surveillance within 12 months of the commencement of the surveillance does not apply, inter alia, in the case of terrorist offences (art. 67-1, para. (3), of the Code of Criminal Procedure);
- The prosecution and trial of terrorist offences have been centralized within the purview of the prosecution service and courts of the Luxembourg judicial circuit (art. 26, para. (2), of the Code of Criminal Procedure).

Paragraph 1.3

Information on the legal or other provisions regulating alternative money transfer systems

Following the adoption of the Act of 2 August 2003 amending:

- The amended Act of 5 April 1993 concerning the financial sector,
- The amended Act of 23 December 1998 establishing a financial sector monitoring committee,
- The amended Act of 31 May 1999 regulating the domiciliation of companies (National Gazette A 2003, p. 2364).

The previous situation has been clarified and confirmed in that activities involving the transfer of funds are the exclusive preserve of authorized financial sector professionals who are monitored and subject to anti-money-laundering legislation (art. 28-6 of the amended Act of 5 April 1993 concerning the financial sector).

Alternative money transfer services are thus not authorized to operate legally in Luxembourg and anyone who engaged in such activities unofficially, and hence illegally, would be liable to prosecution and criminal penalties (art. 64 of this Act).

Paragraph 1.4

Information on the legal provisions on freezing funds

Work has begun on transposing Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence; however, there is no draft law as yet.

Mention should also be made of draft law No. 5165 submitted to the Chamber of Deputies on 12 June 2003, which is aimed at strengthening the machinery for combating money-laundering and terrorist financing.

The most important changes for which this draft law provides are as follows:

- Significant broadening of the scope of application of anti-money-laundering and anti-terrorist-financing provisions (art. 2 of the draft law);
- Extension of the prudential regulations and the rules on detection and cooperation with the competent authorities to all the economic actors referred to in article 2 of the draft law (arts. 3-5);
- Expansion of the basic offences covered by money-laundering (art. 10).

Lastly, it should be noted that counter-terrorism will be taken into account in the elaboration — currently under way — of a draft law on cybercrime; the purpose of the draft law is, inter alia, to approve the Council of Europe Convention on Cybercrime of 23 November 2001.

Paragraph 1.5

Details on alternative money transfer systems

There are **no** "money services businesses" operating in Luxembourg. All activities involving the transfer of funds in Luxembourg are undertaken by financial sector professionals and, more specifically, traditional credit institutions subject to continuous prudential monitoring, as well as strict anti-money-laundering and anti-terrorist-financing legislation.

Paragraph 1.6

Criminalization of the recruitment of members of terrorist groups

There are two distinct mechanisms in Luxembourg law for the suppression and criminal prosecution of the recruitment of terrorists.

1. Under general criminal law (art. 67 of the Penal Code), any person who, inter alia:

- Procures any means used in a serious or ordinary offence, knowing that it is to be so used, or
- Knowingly aids or assists the perpetrator or perpetrators of a serious or ordinary offence in preparing, facilitating or committing it,

is punished as accessory to the serious or ordinary offence. Thus, since recruiting persons for the purpose of terrorist activity constitutes aid, assistance and provision of means for the commission of terrorist acts, recruiters thus become accessories to such acts and therefore are liable to punishment.

2. Under new articles 135-3 and 135-4 of the Criminal Code, any person who, deliberately and knowingly, maintains with another person a structured association established with a view to committing in a concerted manner one or more terrorist acts is guilty of a terrorist act, even if he or she does not intend either to commit an offence while a member of this group or to be involved as a perpetrator or accomplice.

In addition, any person who participates in the preparation or conduct of any legal activity by a terrorist group knowing that his or her participation is contributing to the group's aims is also guilty of a terrorist act.

Thus, any person who provides instruction (e.g. handling weapons and explosives, piloting aircraft, informatics) to terrorists or to a group of terrorists, even if such instruction of itself constitutes a legal activity, is liable to the penalties provided for in article 135-4, paragraph (2), of the Criminal Code, if this person knows that his or her participation is contributing to the accomplishment of terrorist ends.

Paragraph 1.7

Information on the signature and ratification of the 12 international instruments relating to counter-terrorism

Progress in the signature and ratification of [those of] the 12 international instruments relating to terrorism to which Luxembourg is not yet a party; progress in the implementation of the provisions of the five international instruments relating to the prevention and suppression of terrorism to which Luxembourg is a party.

Paragraph 1.8

Reports or questionnaires of other organizations involved in monitoring compliance with relevant international standards

Two other reports may be mentioned in this regard:

- Luxembourg's reply of November 2002 to the European Union questionnaire on peer assessment of national [anti-]terrorist arrangements (Doc. 11722/02 ENFOPOL 113 CATS 52 COTER 44 of 12 September 2002);
- Reply by the Ministry of Justice of 23 September 2003 to the Council of Europe questionnaire on the concepts of "*apologie du terrorisme*" and "incitement to terrorism".

2. Assistance and guidance

No comments.

Questionnaire on peer assessment of national anti-terrorist arrangements

National level

1. National legal framework

1.1. What is the current legal basis for anti-terrorist action in your country and how are terrorism/terrorist crimes defined?

At the present time, acts of terrorism are not specifically characterized as offences under Luxembourg law.

On the other hand, such acts are likely to fulfil other conditions which, under Luxembourg law, define them as criminal offences. Accordingly, forming an association for the purpose of attacking persons or property is punishable by 5 to 10 years' imprisonment, and any person assisting in the commission of such acts is liable to punishment as a co-perpetrator or accessory (arts. 66 to 69 and 322 of the Criminal Code). Pursuant to these provisions, searches and the seizure and confiscation of objects and articles that have been used or are intended for use in the commission of offences may also be carried out on the basis of ordinary criminal law.

These provisions have been applied in respect of all kinds of funds and articles derived from or intended for the commission of an offence in the context of the fight against money-laundering and also in respect of acts carried out by criminal organizations formed for the purpose of attacking persons and property.

Furthermore, in accordance with, inter alia, article 40 of the amended Act of 5 April 1993 concerning the financial sector, all professionals in that sector are under an obligation to cooperate with the authorities in this area.

Pursuant to that article and to the Act of 11 August 1998, which incorporated the offences involving criminal organizations and money-laundering into the Criminal Code, all professionals in the financial sector, such as banking establishments, capital asset managers, financial advisers, brokers, professional securities depositories, notaries, company auditors, chartered accountants, insurance companies and casinos, are under an obligation to report suspicious transactions and to furnish, at the request of the competent authorities and on their own initiative, any information necessary to the prosecution of money-laundering offences. Furthermore, professionals in the financial sector are required to refrain from executing transactions which they know to be related to money-laundering until they have informed the Public Prosecutor, who may give instructions not to execute the transaction.

Currently, under positive law, anyone who fails or who refuses to cooperate is liable to a fine of between €1,250 and €125,000. However, pursuant to the new articles 135-1 to 135-8 and 506-1 of the Criminal Code, as they appear in the draft law of 29 April 2002 on the suppression of terrorism and its financing, such persons will also be liable to a period of imprisonment in accordance with the distinctions laid down in those articles.

The establishment of acts of terrorism as offences per se under Luxembourg law is addressed by the draft law of 29 April 2002 on the suppression of terrorism and its financing, which will be discussed in more detail in paragraph 1.3.5 below.

1.2. Does your legislation include specific provisions ("universal jurisdiction") to prosecute terrorist crimes committed abroad by nationals and/or by foreigners against national interests?

At present, article 5 of the Code of Criminal Procedure provides that any citizen of Luxembourg who commits outside national territory an offence that is punishable under Luxembourg law may be prosecuted and tried in the Grand Duchy of Luxembourg.

In addition, pursuant to article 7 of the same Code, any foreigner who, insofar as combating terrorism is concerned, commits outside the territory of the Grand Duchy an offence against the security of the State or public safety or who falsifies certain official documents, commits murder or inflicts wilful bodily injuries on or interferes with the individual freedom of a citizen of Luxembourg or of an allied country, may be prosecuted and sentenced under Luxembourg law if he/she is found in Luxembourg or is found abroad and the Government of Luxembourg obtains his/her extradition.

Lastly, these provisions will be supplemented by the draft law of 29 April 2002 on the suppression of terrorism and its financing and on the approval of the International Convention for the Suppression of the Financing of Terrorism. More details are contained in paragraph 1.3.5. below. This draft act provides for the introduction of a provision whereby anyone who commits abroad any of the terrorist offences to be incorporated into the Criminal Code pursuant to the same draft law may be prosecuted and tried in the Grand Duchy if a request for extradition is filed and the person concerned is not extradited.

1.3. Has your country assessed legal provisions in order to improve the fight against terrorism both at national and international levels, especially in the following fields?

1.3.1. Interception of communications

Articles 88-1 and 88-2 of the Code of Criminal Procedure, introduced by means of an Act of 26 November 1982, currently allow investigating judges to order, under the conditions specified in these articles, the use of technical surveillance and monitoring measures in respect of all forms of communication.

This provision, which specifically targets the monitoring of the content of communications, will shortly be supplemented by the provisions of a draft law approved by the Chamber of Deputies on 16 October 2002 intended to regulate the detection of telecommunications, namely, the monitoring and interconnection of communications and the geographical location of the means of telecommunication used.

In order to ensure that the competent authorities have access to the relevant information, the Act of 2 August 2002 on the protection of individuals with regard to the processing of personal data which, inter alia, transposed Directive 95/46/EC of 24 October 1995 into Luxembourg law, provides, in article 41, that the authorities

mentioned therein shall have full access upon request and through the intermediary of the Luxembourg Regulatory Institute, to data concerning the identity of subscribers to and users of electronic communications operators and providers, postal services and the providers of such services.

Article 4 of the Act of 21 March 1997 concerning telecommunications, in its current form, also provides that all operators must make available, as a matter of course and free of charge, unless it is technically impossible to do so — which fact must be verified by the Luxembourg Regulatory Institute — to the relevant competent authorities, the technical data and equipment required to enable them to fulfil their legal mandates in the area of telecommunications monitoring.

Article 5 of the aforementioned Act provides that, when public security or defence of the Grand Duchy so require, the Government may, for a limited period, requisition all telecommunications networks within the territory of the Grand Duchy and all equipment connected thereto and/or prohibit completely or in part the provision of a telecommunications service.

The preliminary draft law currently being prepared in order to transpose the European Community directives on telecommunications of 2000 into Luxembourg law will simply amend the texts of those directives and have no effect on their scope.

At present, there are no plans to introduce other legislative provisions in that area.

1.3.2. Cybercrime

Discussions are currently being held with a view to preparing a preliminary draft law to ratify the Council of Europe's Convention on Cybercrime of 23 November 2001 and transpose its provisions into Luxembourg law.

The matter will be subject to review, as appropriate, depending on the outcome of the work carried out within the European Union concerning the proposed framework decision of 19 April 2002 on attacks on information systems.

Lastly, this issue is currently being addressed in the context of work aimed at transposing Directive 2002/58/EC of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector into Luxembourg law. However, as this work is still at the discussion stage, it is not possible at present to provide more details regarding whether and to what extent such transposition is relevant to the question at issue.

1.3.3. Legal obligations for Internet providers/telecom operators

See the answer to paragraph 1.3.1 regarding the obligations imposed on telecommunications operators and Internet service providers by article 41 of the Act of 2 August 2002.

Some of the obligations of service providers are also contained in the Act of 14 August 2000 on electronic commerce, which transposes into Luxembourg law (1) Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures, (2) Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic

commerce, in the Internal Market and (3) certain provisions of Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (goods and services other than financial services).

Under article 63 of that Act, service providers have an obligation to conduct specific monitoring to detect potential violations of the portions of the Criminal Code which deal with moral offences involving minors and other particularly vulnerable people and with racism and revisionism.

Service providers must also conduct targeted or temporary surveillance at the request of the Luxembourg judicial authorities where such surveillance is necessary to preserve security, defence and public safety or to prevent, investigate, detect and try criminal offences in general.

1.3.4. List of terrorist organizations

There are no plans to introduce a specific list for Luxembourg supplementing the counter-terrorism lists already established within international bodies and under existing bilateral cooperation on counter terrorism with other countries, including the United States of America.

1.3.5. Fight against the financing of terrorism

On 29 April 2002, the Luxembourg Government put before the Chamber of Deputies a draft law (1) to counter terrorism and the financing of terrorism and (2) to approve the International Convention for the Suppression of the Financing of Terrorism opened for signature in New York on 10 January 2000.

The purpose of that draft law is to transpose into Luxembourg law not just the provisions of the Convention, but also those of the Council Framework Decision of 13 June 2002 on combating terrorism.

A preliminary bill is also being prepared to transpose into Luxembourg law Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money-laundering. It will alter the current legislation on money-laundering by obliging financial sector personnel, additionally, to pass to the Public Prosecutor automatically any information on potential links with the financing of terrorism.

1.3.6. CBRN terrorism

Luxembourg has no plans to introduce legislation specifically targeting CBRN (chemical, biological, radiological and nuclear) terrorism.

1.3.7. Information and data exchange within the European Union member States and with third countries

Luxembourg has no plans to introduce new national legislation on such matters.

2. Governmental level

2.1. Which ministries are involved in the fight against terrorism and which one has the lead?

The ministries involved in counter-terrorism activities are:

1. The Ministry of Justice
2. The Ministry of the Interior
3. The Minister in charge of the Office of the Prime Minister
4. The Ministry of Foreign Affairs and Foreign Trade
5. The Ministry of Development Aid, Humanitarian Assistance and Defence
6. The Ministry of Finance.

As chairman of the Standing Committee on Security (see 2.3 below), the Minister of Justice coordinates counter-terrorism measures. However, as head of Government and Minister in charge of the Office of the Prime Minister, the Prime Minister is responsible for taking the appropriate decisions in the event of an emergency that threatens the internal or external security of the State.

The Minister in charge of the Office of the Prime Minister has a similar role in his capacity as chairman of the National Protection Committee (see 2.3 below).

2.2. What are their respective competencies?

The ministers listed under 2.1 above contribute within their spheres of responsibility to combating terrorism:

1. The Minister of Justice:

Chairs the Standing Committee on Security and has responsibilities covering the judicial apparatus and European cooperation on justice and extradition;

2. The Minister of the Interior:

Has responsibilities covering the Grand Ducal Police, domestic public safety, relations with international police bodies and civil defence;

3. The Minister in charge of the Office of the Prime Minister:

Has responsibilities covering the State Intelligence Service, the Office of the High Commissioner for National Protection and the Government Communications Centre;

4. The Minister for Foreign Affairs, Foreign Trade, Development Aid and Defence:

Has responsibilities covering foreign and security policy;

5. The Minister of Development Aid, Humanitarian Assistance and Defence:

Has responsibilities over the armed forces and defence of the country;

6. The Minister of Finance:

Has responsibilities covering the Customs Service, which is in charge of border control.

2.3. How has a coordination body been set up at inter-ministerial level?

At Government level, two bodies are responsible for cooperating and coordinating counter-terrorism measures:

I. The Grand Ducal Regulation of 25 October 1963 established the Office of the High Commissioner for National Protection to fulfil permanent coordination functions and carry out monitoring of civilian and military measures to protect the country and population against the harmful effects of armed conflict. Such measures are taken by the Government, sitting as a National Protection Committee, as part of the establishment of long-term overall policy regarding such matters.

Because these bodies were set up during the cold war and therefore focus on protecting the country against armed conflict rather than against terrorist threats, the decision was taken in the aftermath of 11 September to alter their functions and responsibilities to meet the requirements of countering terrorism.

II. In 1975, the Luxembourg Government set up an inter-ministerial Standing Committee on Security with special responsibility for examining the various aspects of counter-terrorism. After the attacks of 11 September 2001, the Committee was restructured and adapted to current counter-terrorism requirements.

2.4. What is its remit and membership, and has it a permanent character?

2.4.1. Remit

I. The National Protection Committee's current remit is to determine long-term overall policy and the civilian and military measures needed to protect the country and population against the harmful effects of armed conflict. However, discussions are under way to consider altering those functions in the wake of the events of 11 September.

II. The Standing Committee on Security is responsible for preparing and proposing measures to prevent, react to or combat criminal or terrorist acts which threaten the political, economic and social structures of the country, and thus to protect its population and institutions.

While the function of the National Protection Committee is to consider the action to be taken in the long term, the function of the Standing Committee on Security is to take whatever immediate, practical and urgent action is needed in the event of a terrorist attack.

2.4.2. Membership

I. The National Protection Committee is composed of the Minister in charge of the Office of the Prime Minister (its chairman) and the ministers in charge of foreign affairs, finance, defence, internal affairs, economic affairs, transport, energy, labour, agriculture, public health and public works. The Committee is assisted by a Senior Board for National Protection consisting of a representative of each member of the Committee and the High Commissioner for National Protection.

II. The Standing Committee on Security, chaired by the Minister of Justice, consists of the commanders and administrative heads of all the forces involved in the functions of the Committee, namely the Director-General of the Grand Ducal Police, the army Chief of Staff, the High Commissioner for National Protection, the Director of the Intelligence Service, the Director of the Judicial Police, the Director of the Customs and Excise Administration, the Director of Civil Defence, the managing director of the Government Communication Centre, the Political Affairs Director of the Ministry of Foreign Affairs, a representative of the Ministry of Justice, a representative of the ministry in charge of the Grand Ducal Police and the Secretary-General of the Cabinet.

2.4.3. Permanent character

I. Because they were established by legislation which is still in force, the national protection bodies are permanent entities.

II. The Standing Committee on Security, as its name suggests, is also a permanent entity.

3. Judiciary

3.1. How are suspected terrorists prosecuted? In comparison with other criminal offenders, are there specific criminal procedures or substantive provisions e.g. in the field of pre-trial/custody, penalties, and liability of legal persons?

Prosecution of suspected terrorists is governed by ordinary law, since Luxembourg's judicial system has no special procedures covering terrorism.

Luxembourg law does not yet provide for liability of legal persons. However, legal persons which are misused for terrorist purposes may be ordered by the Public Prosecutor to close down and be wound up on the basis of article 203 of the amended Companies Act of 10 August 1915, particularly if they are undertaking activities which are illegal under the criminal law.

A preliminary bill is also being prepared to introduce the principle of liability of legal persons into the general criminal law.

3.2. Do you have prosecution units/magistrates with specific competencies and, if so, which are those?

Luxembourg's judicial system has no courts or jurisdictions with special or exclusive responsibility for trying terrorist offences proper.

However, as regards money-laundering, the Act of 11 August 1998 introducing the offences concerning criminal organizations and money-laundering into Luxembourg law also introduced some special provisions concerning the judicial bodies responsible for investigating and prosecuting offences relating thereto.

Pursuant to this Act, the Public Prosecutor, examining magistrates and the trial courts of the judicial circuit of Luxembourg alone are competent, in addition to their responsibilities under ordinary law, respectively to prosecute and hold inquiries into matters concerning money-laundering and related offences.

In order to strengthen this arrangement at the level of legal proceedings, the preliminary bill that is currently being drafted, with a view to transposing Directive

2001/97/EC of 4 December 2001 amending Directive 91/308/EEC concerning money-laundering into Luxembourg law, contains a provision whereby the Public Prosecutor of Luxembourg will designate two substitutes to deal specifically with cases involving money-laundering and the financing of terrorism.

4. Law enforcement

4.1. Within the ministries/law enforcement agencies, which special bodies/departments/units are competent in the fight against terrorism?

A special "terrorism" unit has been set up within the judicial police service of the Grand Ducal Police, to search for, process, use and collect information concerning individuals who might commit terrorist attacks. The "anti-money-laundering" unit of the "Organized Crime" Section, the "special operations" section of the Operations and Prevention Department, the Immigration Department and all other sections provide that unit, as appropriate, with relevant information.

The judicial police service of the Grand Ducal Police also works with the State Intelligence Service which has the country's external security within its remit (cf. 5 below).

4.2. Are they dealing with prevention or law enforcement or both?

The police "terrorism" unit deals mainly with suppression; however, given the special nature of its missions, it also has a preventive function. The mission of the "special operations" section for its part is mainly preventive.

4.3. Do they have administrative or judicial competences, or both?

The "terrorism" unit has judicial police tasks as defined in Book One of the Luxembourg Code of Criminal Procedure, whereas the "special operations" section is responsible, inter alia, for actively seeking and centralizing information relating to public order, hooliganism and terrorism at both the national and the international level. It is also the national contact point for the European Union as regards public order and hooliganism; its responsibilities are therefore administrative.

4.3. (a) If so, what are their competences?

In the performance of its judicial police missions, the "terrorism" unit has the following general tasks:

1. To search for and record crimes and offences, gather the evidence, inform the competent authorities and to search for, seize and arrest the perpetrators and bring them before the competent authorities;
2. To search for individuals whose arrest has been provided for by the law, to seize and arrest them and bring them before the competent authorities;
3. To search for, seize and bring before the competent authorities any articles which have been ordered seized;
4. To transmit to the competent authorities, a report on their missions together with information gathered in the performance thereof.

The special responsibilities include:

1. Collection and filing of any information received through the channels of international anti-terrorism groups (such as Interpol, Europol, the Police Working Group on Terrorism (PWGT), overt sources);

2. Verification of all the names from the files of the judicial police service and the information office of the Grand Ducal Police;

3. Preparation of answers to be given to foreign authorities and international groups and formulation of requests to be submitted to those same authorities;

4. Participation in the work of Europol concerning the file for purposes of analysis on Islamic terrorism;

5. Preparation of periodic reports analysing the threat.

4.4. Does your country have specialized bodies dealing with the financing of terrorism, cybercrime and CBRN terrorism?

Regarding efforts to combat the financing of terrorism, Luxembourg has a special unit involved in the search for offences, namely the "anti-money-laundering" unit of the "organized crime" section of the Grand Ducal Police (cf. 4.1 to 4.3 above).

This unit works in close consultation with the financial intelligence unit of the Public Prosecutor at the circuit court of and in Luxembourg and has special responsibilities with regard to money-laundering (cf. 3.2 above). As the attacks of 11 September 2001 have been termed offences committed within the framework of a criminal organization and as these are basic offences in relation to the money-laundering offence introduced by the Act of 11 August 1998, the financial intelligence unit of the Public Prosecutor of Luxembourg has been able to use its special competences in that area.

This financial intelligence unit will be further strengthened, as stated in 3.2 above.

Luxembourg does not have any special units to combat cybercrime or CBRN terrorism.

4.5. If so, what are their competences?

The task of the "anti-money-laundering" unit of the "organized crime" section of the Grand Ducal Police is to search for and to record crimes and offences, to gather evidence, to inform the competent authorities, to search for and to arrest the perpetrators, on the one hand, of money-laundering offences provided for under articles 506-1 ff of the Criminal Code concerning the offence of money-laundering and, on the other hand, primary designated offences in relation to money-laundering including, insofar as the fight against terrorism is concerned, offences provided for under articles 322 to 324 ter of the Criminal Code concerning associations formed for the purpose of attacking individuals or property or for criminal organizations and arms trafficking.

The financial intelligence unit of the Luxembourg Public Prosecutor, for its part, carries out the responsibilities entrusted to it under article 40 of the amended

Act of 5 April 1993 concerning the financial sector (cf. 1.1 above) and by article 26-2 of the Code of Criminal Procedure (cf. 7.3 below).

4.6. In the field of investigations, both at preventive and law enforcement levels, which specialized departments use specific investigative techniques e.g. interception of communication, technical surveillance including intrusive surveillance, use of undercover agents and simulated transaction, use of eavesdropping devices, human agents in target organizations?

Interceptions of telecommunications and telephone taps are carried out pursuant to articles 88-1 to 88-4 of the Code of Criminal Procedure (cf. 1.3.1 above) and are operated by the interception centre of the Grand Ducal Police, which has a technical unit and an operational support unit in the judicial police.

Surveillance of individuals and of movable and immovable property is carried out by special units of the Grand Ducal Police with the necessary means depending on the type of surveillance.

In the absence of a specific legal framework, operations involving undercover agents, simulated transactions and/or the infiltration of human agents in target organizations cannot be considered unless they are within the context of the provisions of the Code of Criminal Procedure and relate to a preliminary enquiry or examination or an *in flagrante* offence.

4.7. Please, specify briefly and in general terms which techniques.

Interception of telecommunications and telephone taps can be conducted in connection with any communication from or to a mobile or landline telephone. Recorded telecommunications and data or information obtained by other technical means will be sent under seal — with a request for confirmation of receipt — to the examining magistrate; the latter will place in the file such information as may be helpful to the prosecution or to the defence and return the rest to the competent authorities.

Surveillance techniques seek to use individuals and technical means to collect information about individuals or facts discreetly. The special units carry out such surveillance by all appropriate means permitted by law, when so requested by investigators from the judicial police.

4.8. How is coordination between law enforcement and intelligence/security units ensured?

Coordination between the judicial police and the information/intelligence service of the State of Luxembourg takes place at the level of the respective departments.

4.9. In the aftermath of 11 September which measures have been taken, and in which fields, in order to reinforce abilities of law enforcement bodies to combat terrorism e.g. in terms of additional budget, human and material resources?

Based on a reorientation of the systems that existed on 11 September with a view to being able to combat terrorism effectively, police, army and civilian preparedness and reaction plans, at both the national and international level, have been amended so as to free up, promptly, the human and material resources needed

for reaction in the short term. This reorientation and adaptation has been discussed and coordinated within the framework of the Standing Committee on Security (cf. 2.3 and 2.4 above).

The relevant measures have been taken at both the national level, in the context of the judicial and police institutions (cf. 3 and 4 above), and at the international level with a view to intensifying international cooperation.

In the long term, existing legislation and reform of the Office of the High Commissioner for National Protection have been respectively reviewed and undertaken in order to strengthen the system for fighting terrorism (cf. 1, 2.3 and 2.4 above).

5. Security/intelligence services

5.1. Which security intelligence agencies (civil, military or both) are involved in the fight against terrorism?

In the Grand Duchy of Luxembourg, the State Intelligence Service (hereafter referred to as SRE), which was established by the Act of 30 July 1960 on protection of secrets having to do with the State's external security, is involved in the fight against terrorism. Luxembourg does not have any military intelligence agency.

5.2. What are their competences?

The SRE's mission is to protect secrets having to do with the State's external security and to seek such information as is needed to safeguard the external security of Luxembourg and the States with which it is bound by a joint defence agreement.

This mission covers activities having to do with, inter alia, espionage, sabotage and subversion; international terrorism is also considered a threat to the external security of the State.

The SRE's missions are essentially preventive and do not include seeking elements relating to criminal offences but rather seeking information having to do with any activity that might threaten the democratic institutions of the Grand Duchy of Luxembourg.

The members of SRE have no judicial or police powers but are authorized to gather and process information about individuals and to keep such activities secret.

5.3. Do intelligence/security services use special investigative techniques, for example, interception of communications, technical surveillance, including intrusive surveillance, use of undercover agents, simulated transactions?

The members of SRE can take any action that is not forbidden by the Act of 11 August 1982 on protection of privacy. For example, it is quite legal for them to monitor, using any technical device, any individual who is in a place that is open to the public.

Notwithstanding the above-mentioned Act of 11 August 1982, the SRE is authorized by the Code of Criminal Procedure, under certain circumstances, to keep under surveillance any form of communication by individuals who might compromise the external security of the State.

Given that SRE was established in Luxembourg essentially for defensive purposes, it does not use intrusive means of surveillance, undercover agents or simulated transactions and its monitoring and surveillance activities must be carried out in accordance with the Act of 11 August 1982 and article 8 of the European Convention on Human Rights.

5.4. In the aftermath of 11 September, what measures have been taken e.g. to increase the budget, human and material resources allocated to intelligence/security services dealing with terrorism?

In the aftermath of 11 September, SRE concentrated its activities on individuals, institutions or bodies which might constitute a terrorist threat or be involved in related activities, devoting a large proportion of its human and material resources to that purpose.

The resurgence of the terrorist threat was also taken into account during the formulation of a draft law, already under way before 11 September, which would provide for a complete overhaul of SRE and the entire security area, in order to review the tasks entrusted to SRE and, if necessary, strengthen the staff and resources of this service.

6. Private security services

6.1. Have private security services been given tasks in the fight against terrorism?

The question of private security services is currently governed by the Act of 6 June 1990 concerning private security and surveillance services. This Act is to be repealed and replaced shortly by a new one, which was voted into law by the Chamber of Deputies on 8 October 2002, and is expected to enter into force in January 2003.

Neither Act envisages a role for private security services in carrying out tasks in the area of public security, as such tasks are and will remain reserved for the State authorities, particularly the Grand Ducal Police.

Private security services are involved in combating terrorism only indirectly, but may be entrusted by the administrative authorities with specific tasks of protection of individuals or surveillance of property. In this way, these services have been used to ensure State surveillance of public buildings in order to relieve the police authorities, so that police deployments to combat terrorism can be strengthened.

6.2. What is the legal basis and what are their competencies/functions/roles, e.g. airport security?

In line with the explanations above under 6.1, private security services are used at Luxembourg-Findel airport for general tasks, such as patrols to detect suspicious objects or persons, or monitoring of access and general surveillance of infrastructures (buildings, parking lots, etc.).

Private security services therefore operate at the airport as service providers, hired by the company responsible for the operation of the airport.

However, since the State of Luxembourg is responsible for policing the airport under article 1 of the relevant Act of 26 July 2002, all security measures relating to the airport, whether taken by the operator or by private security services hired by the latter, are carried out under the supervision of the Grand Ducal Police.

International level

7. Bilateral cooperation (agreements) with other member States and third countries, liaison experts

7.1. Has your country signed any bilateral agreements (convention, arrangement, memorandums of understanding, etc.) with other member States, applicant countries and third countries in the field of justice and home affairs concerning terrorism? If yes, with whom and what type of cooperation is foreseen?

Apart from the legal instruments concluded in various international forums, the Grand Duchy of Luxembourg has not concluded any special instruments concerning counter-terrorism either with member States of the European Union or with applicant countries.

7.2. Are liaison experts of your country involved in the fight against terrorism and what kind of information are they used to transmit (e.g. personal data, intelligence ...) and to receive from counterparts?

At the international level, the Luxembourg authorities are cooperating with the authorities of other States within Interpol and Europol in order to facilitate the exchange of information relating to combating terrorism and, where necessary, alert the authorities of other States members of those organizations as soon as possible. Luxembourg is also cooperating fully in intensifying the exchange of information decided upon by the Council of the European Union at its meeting on 20 September 2001.

The Luxembourg police authorities are participating in and cooperating with an informal working group, the Working Group on Terrorism, which consists of representatives of the police authorities of States members of the European Union and those of several other European States.

7.3. Did your country enhance its bilateral cooperation with the United States of America since 11 September 2001?

Bilateral cooperation between the Grand Duchy of Luxembourg and the United States of America is currently governed by the Treaty on mutual legal assistance in criminal matters, signed at Luxembourg on 13 March 1997 together with the exchange of letters relating thereto, and by the Extradition Treaty signed at Washington on 1 October 1996.

Since 11 September, the Luxembourg authorities have intensified their direct cooperation with the authorities of the United States of America, particularly the Federal Bureau of Investigation and the United States Treasury, through the exchange of information concerning all aspects of counter-terrorism. Thus, for example, specific checks have been carried out in the Luxembourg financial sector, in collaboration with professionals in that sector, to determine whether the entities

or individuals appearing on the lists transmitted by the United States possess any kind of assets in Luxembourg.

7.4. In the light of the current terrorist situation, does your country intend to enter into new agreements? If yes, with whom, in which field(s) and on which items?

The Grand Duchy of Luxembourg does not currently intend to enter into new agreements in the area of counter-terrorism.

7.5. Has cooperation with other member States, applicant countries and third countries been strengthened since 11 September 2001?

In this respect, reference is made to what is stated above under question 7.2.

Questionnaire of the Council of Europe on the concepts of "*apologie du terrorisme*" and incitement to terrorism

1. *Does your national legislation define* "apologie du terrorisme" *and/or "incitement to" terrorism as a specific criminal offence?*

Luxembourg criminal law does not define acts and behaviours which may be regarded as "*apologie du terrorisme*" and/or incitement to terrorism as specific criminal offences.

2. *If so, how are these offences defined and which are the sanctions attached?*

Cf reply to question 1.

3. *If not, does your legislation provide for the possibility of sanctioning* "apologie du terrorisme" *and/or "incitement to" terrorism under other (non-specific) criminal offences? How are these offences defined and which are the sanctions attached?*

Acts and behaviours of "*apologie du terrorisme*" and/or incitement to terrorism are fully punishable under general criminal law, and more particularly in application of the provisions relating to perpetrators/co-perpetrators and accomplices (arts. 66 to 69 of the Criminal Code).

Under article 66 of the Criminal Code, the following are regarded as perpetrators and co-perpetrators of a crime or an offence:

- Those who committed it or cooperated directly in its commission;
- Those who provided assistance of any kind without which the crime or offence could not have been committed;
- Those who, by means of gifts, promises, threats, abuses of authority or of power, machinations or plots, directly incited the crime or the offence;
- Those who, by means of speeches made at meetings or in public places, or posters displayed, or printed or other matter sold or distributed, directly incited the commission of the crime, without prejudice [to certain provisions of the law relating to the press].

Pursuant to new articles 135-1 to 135-4 of the Criminal Code, as introduced in the Act of 12 August 2003 (cf. response to question 4), the perpetrators and co-perpetrators of the various acts of terrorism envisaged therein are punishable as follows:

– Act of terrorism:	15 to 20 years' imprisonment
– Act of terrorism causing death:	life imprisonment
– Being an active member of a terrorist group and/or participating in the preparation of activity:	1 to 8 years' imprisonment
– Being the leader of a terrorist group:	10 to 15 years' imprisonment

Under the provisions of article 67 of the Criminal Code, the following are considered as accessories to a crime or an offence:

– Those who gave instructions to commit a crime or an offence;

– Those who procured weapons, instruments or any other means used for the crime or the offence, in the knowledge that they would be used for that purpose;

– Those who with the exception of the case envisaged in article 66, paragraph 3, knowingly aided or assisted the perpetrator or perpetrators of the crime or offence in preparing or facilitating it, or in carrying it out.

Under article 69 of the Criminal Code, accessories to a crime are punishable by the penalty immediately below the penalty they would have incurred if they had been the perpetrators of the crime, in accordance with the scale shown in article 52 of the Criminal Code. That article shows the penalty immediately below:

(a) The penalty of life imprisonment as being 20 to 30 years' imprisonment;

(b) The penalty of 20 to 30 years' imprisonment as being 15 to 20 years' imprisonment;

(c) The penalty of 15 to 20 years' imprisonment as being 10 to 15 years' imprisonment;

(d) The penalty of 10 to 15 years' imprisonment as being 5 to 10 years' imprisonment;

(e) The penalty of 5 to 10 years' imprisonment as being at least 3 months' imprisonment.

The penalty imposed on accessories to a crime, particularly crimes which are punishable by imprisonment, is limited to two thirds of the penalty which would have been applied to them if they had been the perpetrators of the crime.

4. How are these provisions applied in practice (relevant case-law)

Since specific offences relating to acts of terrorism and financing of terrorism were introduced into Luxembourg criminal law only by the Act of 12 August 2003 on (1) the suppression of terrorism and of its financing and (2) the approval of the International Convention for the Suppression of the Financing of Terrorism, opened for signature at New York on 10 January 2000, and this act entered into force on 19 September 2003, there is not yet any case-law or practical measures for application relating thereto.